

Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



Henry R. Darwin  
Director

July 02, 2014

Mr. Jared Blumenfeld, Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
Mail Code ORA-1  
75 Hawthorne Street  
San Francisco, CA 94105

RE: Second Submission of Supplemental Information to the 2012 New Source Review State  
Implementation Plan Submission

*Jared*  
Dear Mr. Blumenfeld:

Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-106, 49-404, 49-406 and 49-425 and the Code of Federal Regulations (CFR) Title 40, §§ 51.102 through 51.104, the Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA), the provided supplemental information to the "State Implementation Plan – New Source Review [NSR]" regarding state and county jurisdiction to administer NSR.

ADEQ submitted the original SIP revision on October 29, 2012. That version included the most recent revisions to the NSR program in the form of the Notice of Final Rulemaking (NFRM) published in the Arizona Administrative Register on July 6, 2012. Those revisions became effective on August 7, 2012. The SIP revision also included rules that were not amended by the NFRM and existing Arizona statutes.

On September 6, 2013, ADEQ submitted, as supplemental information, certified copies of the rules and statutes that were included in the original SIP revision.

As documented in the supplemental information document, ADEQ provided public notice of, an opportunity to submit written comments on and a public hearing for this supplement pursuant to A.R.S. § 49-444. A hard copy of the supplement and an electronic exact duplicate of the hard copy on CD are included with this letter.

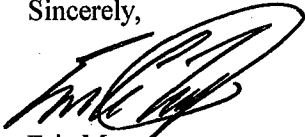
I am submitting this supplemental information to the SIP in my capacity as Director of the ADEQ Air Quality Division pursuant to the attached delegation of authority from Henry R. Darwin, ADEQ Director.

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

*Printed on recycled paper*

If you have any questions about this submission, please contact me, at (602) 771-2288.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Massey', written over a horizontal line.

Eric Massey  
Director, Air Quality Division

EM:sb5

Enclosures (4)

Cc (via email): Matt Lakin, EPA Region IX  
Colleen McKaughan, EPA Region IX  
Lisa Beckham, EPA Region IX  
Andrew Chew, EPA Region IX  
Laura Yannayon, EPA Region IX  
Wienke Tax, EPA Region IX



**State Implementation Plan Revision  
New Source Review**

**Supplemental Information**

**Air Quality Division  
July 2014**

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# 1 Introduction

The purpose of this supplement to the State Implementation Plan: New Source Review submitted by ADEQ on October 29, 2012 (“2012 SIP Revision”), is to address Clean Air Act requirements relating to the division of jurisdiction over sources subject to major and minor new source review (NSR) throughout Arizona. Section 2 provides a complete explanation of how jurisdiction is divided among ADEQ and various county agencies. Section 3 updates specific SIP elements related to jurisdiction.

## 2 Agency Jurisdiction

As required by 40 C.F.R. § 51.162, this section identifies “the State or local agency which will be responsible for meeting the requirements of [40 C.F.R. Part 51, Subpart I, ‘Review of New Sources and Modifications’] in each area of the State.” This supplement also addresses the requirements of section 110(a)(2)(E)(i) of the Clean Air Act, 42 U.S.C. § 7410(a)(2)(E)(i) (adequate personnel, funding and authority to carry out the SIP), and 40 C.F.R. § 51.240 (identification of organizations that will participate in implementing and enforcing the SIP) with respect to NSR.

### 2.1 Statutory Authority

The division of jurisdiction between ADEQ and county air pollution control agencies in Arizona is governed by A.R.S. § 49-402(A) and (B), which provide as follows:<sup>1</sup>

A. The department [ADEQ] shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.
2. Smelting of metal ore.
3. Petroleum refineries.
4. Coal fired electrical generating stations.
5. Portland cement plants.
6. Air pollution by portable sources.
7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

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<sup>1</sup> A certified copy of A.R.S. § 49-402 was included in the Supplemental Information to the 2012 New Source Review State Implementation Plan submitted on September 6, 2013.

8. Sources that are subject to title V of the clean air act and that are located in a county for which the administrator has disapproved that county's title V permit program if the department has a title V program that has been approved by the administrator. On approval of that county's title V permit program by the administrator, the county shall resume jurisdiction over those sources.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and has provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

EPA last approved section 49-402 into the SIP on June 8, 2000, 65 Fed. Reg. 36353, 36358 (June 8, 2000); 40 C.F.R. § 52.120(c)(96)(i)(A)(2). The legislature amended the statute in 2002 to clarify section 49-402(A)(8) relating to jurisdiction over title V sources. 2002 Ariz. Sess. Laws Ch. 110, § 1. ADEQ included the current version of section 49-402 in the September 6, 2013 supplement to the 2012 SIP Revision.

When ADEQ has jurisdiction over sources under A.R.S. § 49-402(A) or (B), it may delegate authority to administer the state air quality program with respect to those sources to a county under A.R.S. § 49-107(A):

The director may delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.

EPA approved section 49-107 into the SIP on November 5, 2012. 77 Fed. Reg. 66398, 66404 (Nov. 5, 2012); 40 C.F.R. 52.120(c)(152)(ii)(A)(2)(iv).

## **2.2 ADEQ Jurisdiction**

### **2.2(a) Stationary Source Categories**

Section 49-402(A) confers on ADEQ unconditional original jurisdiction over five stationary source categories: smelting of metal ores, coal fired electrical generating

stations, petroleum refineries, Portland cement plants and portable sources. Thus, ADEQ has original jurisdiction over these source categories throughout the state, regardless of whether they are located in a county with its own air pollution control program.<sup>2</sup>

As noted below, ADEQ has delegated jurisdiction over one such source to Pima County and may delegate jurisdiction over other sources within these categories to county programs in the future.

## **2.2(b) Major Sources**

Under subsection (1), ADEQ has original jurisdiction *over major sources* in a county “that has not received approval from the administrator [of EPA] for new source review ... *and* prevention of significant deterioration [PSD].”<sup>3</sup> (Emphasis added.) The plain language of subsection (1) gives ADEQ original jurisdiction over *all* major sources in a county, unless the county has obtained EPA approval of *both* the new source review and PSD programs.<sup>4</sup> Because this subsection covers only major sources, ADEQ interprets “new source review” to mean nonattainment new source review of major sources as required by Title I, Part D of the Clean Air Act. In addition, ADEQ interprets “approval from the administrator” to include a delegation by EPA of authority to administer the PSD program under 40 C.F.R. § 52.21. We note that in an August 11, 1994 letter (attached as Appendix A), EPA confirmed that Maricopa and Pima Counties were approved to operate the PSD program pursuant to EPA’s delegation of the PSD program to these counties.

In short, under subsection (1), ADEQ has original jurisdiction over all major sources in any county that lacks EPA SIP approval or delegation for either nonattainment NSR or PSD. This includes the 12 counties that do not have any form of air pollution control program: Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz, Yavapai and Yuma.

Maricopa and Pima Counties have SIP-approved nonattainment NSR programs and EPA delegation to administer 40 C.F.R. § 52.21. ADEQ therefore does not have original jurisdiction over major sources in those counties but retains the authority under A.R.S. § 49-402(B) to assert jurisdiction over specific matters, geographical areas or sources within those counties.

Pinal County has a SIP-approved PSD program but lacks any form of EPA approval for nonattainment NSR. ADEQ therefore has original jurisdiction over major sources in Pinal County, but has delegated that jurisdiction to the County under A.R.S. 49-107. A copy of

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<sup>2</sup> Although not relevant to NSR, ADEQ notes that it also has unconditional original jurisdiction over mobile sources throughout the state under A.R.S. § 49-402(A)(7).

<sup>3</sup> Subsection (8) gives ADEQ original jurisdiction over Title V sources in any county that has a Title V program which has been disapproved by EPA. This subsection currently has no effect on ADEQ’s jurisdiction. Maricopa, Pima and Pinal Counties all have fully approved Title V programs and therefore are not subject to this subsection. By its literal terms, this subsection also does not apply to the twelve counties that have never submitted a Title V program and therefore never had a program disapproved.

<sup>4</sup> At first glance, this grant of jurisdiction may seem unnecessarily broad. A major source, however, depending on the pollutants it emits and where it is located, may be subject to both nonattainment NSR and PSD. The approach in subsection (1) is therefore necessary to prevent a major source from potentially being subject to the permit jurisdiction of two different agencies.

relevant excerpts from the current delegation agreement between ADEQ and Pinal County is attached as Appendix B.

## **2.2(c) Minor Sources**

Subsection B of A.R.S. § 49-402 provides that except as specified in subsection A, counties or multi-county air quality control regions shall have jurisdiction over “the review, issuance, administration and enforcement of permits issued pursuant to the state air quality laws.” It also provides that a county “shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction.” This arrangement—state agency jurisdiction over specified source categories and county jurisdiction over the remaining sources, subject to the state agency’s authority to assert jurisdiction over additional sources—has been in place since Arizona submitted its first SIP in 1972.<sup>5</sup>

From 1973 to 1988 the Arizona Department of Health Services (ADEQ’s predecessor) and then ADEQ issued orders or letters asserting air quality jurisdiction over all stationary sources in nine counties that had failed to adopt air pollution control programs or had abandoned existing programs.<sup>6</sup> There is no record, however, of any such assertion for three counties—Graham, Greenlee and La Paz—that never had programs. Thus, the practice of formally asserting jurisdiction in counties without programs may not have been uniform. A copy of these assertions of jurisdiction is attached as Appendix C. As noted below, however, they are not necessary to establish ADEQ jurisdiction.

In 1992, the legislature amended section 49-402(B) to provide that before asserting jurisdiction over air quality permits in a county, ADEQ must give prior notice and an opportunity to confer to the “control officer.” 1992 Ariz. Sess. Laws Ch. 299, § 8. Section 49-471(6) defines “control officer” to mean “the executive head of the department authorized or designated to enforce air pollution regulations, or the executive head of an air pollution control district established pursuant to section 49-473.” In a county with no air pollution control program whatsoever, no such person exists, and it is impossible for ADEQ to provide this notice. ADEQ therefore interprets the current version of section 49-402(B) to require an assertion of jurisdiction only where there is a county agency that could otherwise exercise that jurisdiction. Where there is no such agency, ADEQ automatically has jurisdiction. ADEQ believes this interpretation is consistent with the legislature’s intent, evident in A.R.S. §§ 49-402(A)(1) and (8), that ADEQ step in to operate an air quality program in any county that lacks the authority necessary to carry out that program.

In accordance with this interpretation, ADEQ has issued air quality permits to eight minor sources in the three counties for which there is no record of a state assertion of jurisdiction: Graham, Greenlee and La Paz. There has never been a challenge to ADEQ’s authority to issue these permits.

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<sup>5</sup> See The State of Arizona Air Pollution Control Implementation Plan at C-3 (May 1972) (former A.R.S. § 36-1706, predecessor to A.R.S. § 49-402).

<sup>6</sup> The letters or orders asserting jurisdiction were included in previous SIP submissions.



ADEQ therefore has jurisdiction to issue both minor and major NSR permits in Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz, Yavapai and Yuma counties.

As noted below, the responsible county agencies, rather than ADEQ, have jurisdiction over minor NSR in Maricopa, Pima and Pinal Counties. This jurisdiction is subject to ADEQ's authority to assert jurisdiction over particular matters, geographical areas or sources under A.R.S. § 49-402(B).

### **2.3 Maricopa and Pima County Jurisdiction**

As noted above, Maricopa and Pima Counties have approved nonattainment NSR programs and delegation by EPA to administer the federal PSD program. The Maricopa County Air Quality Department (MCAQD) and Pima County Department of Environmental Quality (PDEQ) therefore retain jurisdiction over major sources within their respective counties.

Under A.R.S. § 49-402(B), MCAQD and PDEQ also have jurisdiction over any sources not subject to ADEQ's original jurisdiction, except where ADEQ has asserted jurisdiction. The county agencies therefore have jurisdiction to issue minor NSR permits.

ADEQ notes that pursuant to these authorities, ADEQ has delegated authority to administer the NSR program with respect to the Sundt Generating Station, a coal-fired electric generating station subject to ADEQ's original jurisdiction under A.R.S. § 49-402(A)(4). In addition, ADEQ has asserted jurisdiction over the Rosemont Copper Mine, a minor source in Pima County, under A.R.S. § 49-402(B). A copy of the delegation agreement with PDEQ and the assertion of jurisdiction are attached as Appendix D. The inclusion of these specific actions in this supplemental SIP submission does not constrain ADEQ's authority to rescind these actions or to delegate or assert jurisdiction over other sources without prior EPA approval under sections 49-107 and 49-402.

### **2.4 Pinal County Jurisdiction**

As noted above, ADEQ has original jurisdiction over major sources in Pinal County but has delegated that jurisdiction to the Pinal County Air Quality Control District (PCAQCD).

Under the delegation agreement between ADEQ and PCAQCD, the county is obligated to enforce state major NSR rules, but must also enforce its own rules to the extent they are more stringent. The County therefore retains the authority to enforce the local PSD program approved by EPA.

The ADEQ major NSR rules included in the 2012 SIP revision were revised in 2012 in order to bring them into compliance with all current federal NSR requirements. PCAQCD is obligated to enforce these requirements under its delegation agreement. The 2012 SIP Revision therefore provides for the enforcement in Pinal County of current federal requirements, including, for example, the PM<sub>2.5</sub> increments.

Once Pinal County secures EPA approval of both its PSD and nonattainment NSR programs, the County will automatically reassume original jurisdiction over major sources within its boundaries.

## 2.5 Summary

The following table summarizes the current division of jurisdiction described above. As discussed above, jurisdiction over specific matters, geographical areas or sources may be altered by ADEQ's exercise of its authority to delegate or assert jurisdiction under A.R.S. §§ 49-107 or 49-402(B), respectively, or to rescind such actions.

Area	Source Categories	ADEQ Jurisdiction	County Jurisdiction
Maricopa County	Smelting of metal ores Coal fired electrical generating stations Petroleum refineries Portland cement plants Portable sources	Original	None
	All other major and minor sources	None	Original
Pima County	Smelting of metal ores Coal fired electrical generating stations (except Sundt) Petroleum refineries Portland cement plants Portable sources	Original	None
	Sundt Generating Station	Original	Delegated
	Rosemont Copper Mine	Asserted	None
	All other major and minor sources	None	Original
Pinal County	Smelting of metal ores Coal fired electrical generating stations Petroleum refineries Portland cement plants Portable sources	Original	None

Area	Source Categories	ADEQ Jurisdiction	County Jurisdiction
	Major sources	Original	Delegated
	All other minor sources	None	Original
Rest of State	All	Original	None

### 3 SIP Provisions Being Replaced

The following table updates the first row of Table 2-1 of the 2012 SIP Revision to identify additional provisions relating to jurisdiction that are included in the current SIP and being replaced by the current version of A.R.S. § 49-402. It also includes a new row to update the state laws relating to delegation of authority included in the SIP. (Items not previously included in Table 2-1 are in bold face.)

Rule or Statute Added	SIP Rule(s) Replaced	Amended by NFRM
A.R.S. § 49-402. State and county control	<b>A.R.S. § 36-1706. State and county control</b> <b>7-1-8.1 (R9-3-801) Original State Jurisdiction</b> <b>7-1-8.2 (R9-3-802) Assertions of Jurisdiction</b> R9-3-1101. Jurisdiction	No
<b>A.R.S. § 49-107. Local delegation of state authority</b>	<b>7-1-8.3 (R9-3-803) Delegation of authority</b>	<b>No</b>

### 4 Public Process

Proof that ADEQ gave notice of this Supplemental SIP Revision and held a public hearing in accordance with A.R.S. § 49-444 is attached as Appendix E. No written comments were received by the deadline of June 30, 2014, and nobody appeared at the public hearing to offer oral comments. Except for (1) minor clarifying changes to footnote 3 and section 2.3(c) relating to state and county jurisdiction over title V sources, (2) the correction of typos and (3) the addition of this section, ADEQ has made no changes to the public review draft of this document.

APPENDIX A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

August 11, 1994

Ms. Nancy Wrona  
Arizona Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, AZ 85012

Re: Status of NSR Authority in Maricopa and Pima Counties

Dear Ms. Wrona:

The purpose of this letter is to clarify EPA's position regarding the status of new source review (NSR) authority in Maricopa and Pima Counties, both for the regulation of sources subject to Prevention of Significant Deterioration (PSD) and nonattainment NSR.

EPA has delegated to both Maricopa and Pima Counties the authority for the PSD program, in agreements dated November 22, 1993 and April 14, 1994, respectively. In EPA's view therefore, the counties are approved to operate the PSD program. With respect to nonattainment NSR, both of these counties received EPA approval of their rules by their adoption into the State Implementation Plan (SIP) beginning in 1972. We will review and take action on the NSR SIP submittal which will update the SIP based on recent changes to the federal Clean Air Act, State law, and county ordinances as soon as possible after it is received by EPA.

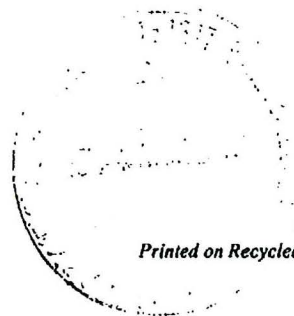
If you have any questions, please contact me at (415) 744-1240, or Matt Haber of my staff at (415) 744-1254.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ken Bigos".

Ken Bigos  
Chief, Stationary Source Branch  
Air & Toxics Division

cc: Jo Crumbaker, Maricopa County  
David Esposito, Pima County



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## APPENDIX B

### DELEGATION AGREEMENT

Between

Arizona Department of Environmental Quality

And

Pinal County, hereinafter, County, a political subdivision of the State of Arizona

Delegation Agreement # EV12-0061

Whereas, Arizona Revised Statutes (A.R.S.) § 49-107, authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, or county health department, any functions, powers, and duties, hereinafter, Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local environmental agency, or county health department and

Whereas, Pinal County includes: an Environmental Health Division, which is an operating division of the Health Department; and Air Quality Control District, which is an operating division of the Development Services Department; and an Emergency Management Department, which is an operating division of the Development Services Department, and therefore, Pinal County is the local environmental agency or county health department, hereinafter, LA, as set forth in A.R.S. § 49-107, and

Whereas, A.R.S. §§ 11-201(A)(3) and 11-952 authorize the County Board of Supervisors (and by delegation the LA, where the LA is a local environmental agency or health department) to enter into contracts as necessary to assist LA in exercising its powers, and

Whereas, the LA deems that it is in its best interests to accept such delegation,

Therefore, the Director of ADEQ delegates to Pinal County as LA, and the LA accepts the delegation of those Functions and Duties described in the Appendices of this Delegation Agreement, hereinafter Agreement, (Appendix A of this Agreement for Wastewater and Drinking Water Delegations, Appendix B of this Agreement for Solid Waste Delegations, and Appendix C of this Agreement for Air Quality Delegations) on behalf of ADEQ and in accordance with the terms and conditions specified in this Agreement.

## APPENDIX B

### A. DELEGATED FUNCTIONS AND DUTIES

The Functions and Duties that are delegated to the LA by this Agreement are identified in Sections A through N, and in Appendices A, B, and C of this Agreement. ADEQ statutes, rules, policies and guidance shall be used in implementing the delegated Functions and Duties. The Functions and Duties not specifically delegated by this Agreement are retained by ADEQ.

### B. STANDARDS OF PERFORMANCE

1. The standards of performance required of the LA to perform the delegated Functions and Duties and to fulfill the terms of this Agreement are those provided by statute and duly adopted rule, and are generally the same as those required of ADEQ personnel. The performance of the delegated Functions and Duties by the LA shall conform to ADEQ statutes, rules, policies and guidance. Program-specific standards of performance are identified in the Appendices of this Agreement.
2. ADEQ shall provide the LA with periodic training upon the request of the LA.
3. ADEQ shall provide operating guidance for use in implementing the terms of this Agreement concurrent with the execution of this Agreement. ADEQ will use its best efforts to provide the LA with new and/or updated guidance prior to or shortly after the effective date of the guidance. The guidance shall, at a minimum, include Engineering Bulletins, program guidance memoranda, substantive policy statements, copies of all applicable forms, policies and procedures, and other material that may assist the LA to carry out the delegated Functions and Duties specified in this Agreement. The LA may contact ADEQ for clarification or guidance on procedural or technical issues.
4. In the event of any dispute between the LA and a third party regarding the LA's interpretation or application of ADEQ statutes, rules, policies and guidance, ADEQ shall, if requested by the LA, provide timely assistance and direction to the LA.

### C. FEE AUTHORITY AND TYPES OF FEES

1. To the extent permitted by law, ADEQ delegates the authority to collect fees under its established fee rules to assure the LA may accomplish delegated Functions and Duties according to the applicable standards.

The LA shall annually report delegated program authority fees to ADEQ on or before September 1. The report shall list all permits issued that year and the total revenue for each general permit category. ADEQ shall provide the LA with a template for the report. The report shall be delivered to ADEQ Central Office, 1110 West Washington Avenue, Phoenix, Arizona 85007, to the Office of the Chief Financial Officer.

## APPENDIX B

Unless otherwise provided by statute, fees imposed by the LA shall be limited to the cost of service, including all direct and indirect costs.

2. Fees are authorized by, and shall conform to, the requirements of state laws and rules and county ordinances.
3. All fees collected by the LA pursuant to this Agreement shall be retained by the LA as consideration for performing the Functions and Duties described in this Agreement.

### D. PERSONNEL QUALIFICATIONS

The required personnel qualifications for exercising each Program's delegated Functions and Duties are identified in the corresponding Appendix to this Agreement.

### E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. The LA agrees to maintain records relating to its performance of the delegated Functions and Duties as specified in this Agreement for a period of ten years from the date of complete resolution of any technical dispute, contested case, action against a party, or any appealable agency action, unless a longer period is required by statute or rule.
2. The LA agrees to create and submit reports related to its performance of the delegated Functions and Duties as specified in this Agreement. The reports shall be created and submitted to ADEQ in accordance with the specifications in the Appendices to this Agreement.

### F. OVERSIGHT ACTIVITIES

1. ADEQ may accompany LA personnel on inspections and may review all records relating to the LA's performance of the delegated Functions and Duties as set forth in this Agreement. ADEQ shall provide prior notice to the LA of its intent to accompany LA personnel on inspections. LA personnel may accompany ADEQ inspectors on inspections for purposes of training, information sharing or coordinating LA and ADEQ activities. The LA shall provide prior notice to ADEQ of its request to accompany ADEQ inspectors on inspections.
2. Periodically, ADEQ shall conduct an evaluation of the LA's performance of the delegated Functions and Duties. Either party to this Agreement may request that the frequency of evaluations be increased. The initial results of all program evaluations shall be in writing and shall be communicated to the LA in a draft report. The LA is entitled to comment on the draft report. After ADEQ's response to comments, ADEQ shall finalize the report and transmit a copy to the LA. The final reports of all program evaluations are public documents pursuant to A.R.S. § 39-121 *et seq.*



## APPENDIX B

### G. DELEGATION OF ENFORCEMENT AUTHORITIES; LOCAL AGENCY OBLIGATIONS

1. This Agreement is subject to the provisions of A.R.S. § 49-106.
2. As a supplement to any independent statutory authority LA may have, LA is hereby delegated the enforcement authorities pursuant to A.R.S. §§ 44-1307, 49-141, 49-142, 49-261, 49-262, 49-354 (A) and (B), 49-460 through 463, 49-781 through 783, 49-791, 49-922(B), 49-923 and 49-924, as applicable to the delegated Functions and Duties specified in this Agreement.
3. The LA shall be responsible for initiating timely and appropriate enforcement actions for alleged violations by individuals and facilities affected under this Agreement. The LA shall make compliance determinations and conduct enforcement actions in accordance with ADEQ's Compliance and Enforcement Handbook. The LA shall use inspection checklists and boilerplate documents provided by ADEQ or such documents that contain the same content as those documents provided by ADEQ.
4. ADEQ retains its authority to take an enforcement action against any individual or facility, the regulation of which is specified in this Agreement. At its discretion, ADEQ may refrain from exercising such authority if ADEQ determines that the enforcement action taken by the LA is timely, appropriate and effective. Except in a case involving an immediate threat to the public health, safety or environment, ADEQ shall give the LA 30 days prior written notice of its intent to initiate an enforcement action if the LA fails to initiate such enforcement action. In a case involving an immediate threat to the public health, safety or environment, ADEQ shall make its best efforts to notify the LA prior to its undertaking such an enforcement action.
5. Where appropriate, and if there is no conflict with applicable environmental statutes and rules, LA may conduct enforcement action using the authority provided by A.R.S. Title 36 or A.R.S. Title 49, Chapter 3, Article 3. Nothing herein shall preclude LA from independently initiating enforcement action pursuant to its own authority under A.R.S. §§ 36-602, 36-603, 49-143, and 49-144, or any other civil or criminal statute or local ordinance, or from pursuing any other available legal or equitable remedy.
6. In those cases where the Attorney General has exclusive authority to bring an action to collect civil penalties, ADEQ shall timely notify the Attorney General of the LA's intent to initiate an enforcement action and such enforcement action shall be coordinated among the LA, ADEQ, the Attorney General and the LA's County Attorney.
7. In cases of civil enforcement, the LA and ADEQ shall coordinate litigation and settlements, unless the LA has independent statutory enforcement authority. The LA and ADEQ may act as co-plaintiffs in order to maximize resources.



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8. Civil penalties assessed and collected under the authority of ADEQ's statutory enforcement authority shall be in the name of the State of Arizona, and shall be forwarded to ADEQ with copies of court documentation for deposit into the state general fund in accordance with A.R.S. Title 35, Article 3.
9. ADEQ may execute compliance initiatives directed at certain classes of violations or facilities that are alleged to be in violation of applicable statutes or rules. To the best of its ability, the LA agrees to cooperate in the successful execution of such compliance initiatives that involve facilities, the regulation of which has been delegated in by this Agreement.

### H. APPEALS OF LOCAL AGENCY ACTIONS

1. Unless otherwise provided by statute, LA shall conduct administrative hearings for appeals of licensing decisions and enforcement actions taken by the LA under the delegated Functions and Duties of this Agreement in accordance with the A.R.S. Title 41, Chapter 6 Administrative Procedures, A.R.S. § 41-1092 *et seq.*, and the Office of Administrative Hearings, Rules of Procedure, Arizona Administrative Code (A.A.C.) R2-19-101 *et seq.* The LA shall use administrative law judges provided by the Office of Administrative Hearings (OAH). If an OAH administrative law judge conducts an administrative hearing under this Agreement, ADEQ shall pay for the LA's OAH hearing related costs. The LA, the LA's County Attorney, or counsel retained by LA, shall represent the LA at all administrative hearings. Nothing in this agreement mandates that the LA contract for the services of administrative law judges with respect to administrative hearings involving matters arising from the LA's independent authority, functions and duties.
2. Pursuant to A.R.S. § 12-904, if the OAH administrative law judge grants or denies the relief requested, either the appellant or the LA may file a complaint in superior court within 35 days after the decision.
3. The LA shall provide ADEQ an annual report by July 31<sup>st</sup> of appeals filed and their final resolution.

### I. LICENSING AUTHORITY

1. The LA agrees to comply with the overall time frames set forth in A.A.C. R18-1-525 when issuing licenses pursuant to delegated Functions and Duties under this Agreement. The LA shall provide a quarterly report to ADEQ indicating the number of licenses issued that quarter, by general type of license, and the number of licenses that exceeded the licensing time frame for the licensing decision. If the LA fails to meet a licensing time frame, the quarterly report shall indicate the reason(s) why the licensing time frame was missed and the corrective action the LA has taken. If the LA demonstrates a pattern of failing to meet the required licensing time frames, ADEQ shall assist the LA in correcting the deficiencies in LA's licensing procedures.

## APPENDIX B

2. The LA shall submit the quarterly reports described in subsection 1 of this Section to the ADEQ primary contact person designated in Appendices A through C of this Agreement.

### J. LOCAL AGENCY INDEPENDENT AUTHORITY; SUBDELEGATION

1. ADEQ's delegation of Functions and Duties to a municipality within the LA's boundaries shall in no way infringe upon, reduce or usurp the LA's right, authority and responsibility to implement non-delegated authorized activities and programs.
2. The LA may not sub-delegate Functions and Duties delegated pursuant to this Agreement to another local government agency or political subdivision without obtaining the prior written approval of the Director of ADEQ.
3. ADEQ shall provide the LA a copy of any delegation agreement it has entered into with a municipality, located in whole or in part within the LA's boundaries.

### K. CONFLICT RESOLUTION PROCEDURES

The parties may resolve a conflict arising under this Agreement through arbitration. If the parties invoke this provision, the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

### L. AMENDMENT AND TERMINATION PROCEDURES

1. Either party may seek to amend this Agreement. An amendment to this Agreement shall be in writing, shall be executed by the Director of ADEQ, the Director of the LA, the Chairman of the LA's Board of Supervisors, the Clerk of the LA's Board of Supervisors, and shall be approved as to form by the Attorney General and the LA's County Attorney. Amendments shall comply with the provisions in A.R.S. § 41-1081. Amendments to this Agreement shall be effective 30 days after written notice of ADEQ's final decision to amend this agreement.
2. This Agreement may be terminated, in whole or in part, by either party upon providing 30 days prior written notice by certified mail to the other party and in compliance with subsection 3 of this section.
3. The LA shall, prior to the termination of all or part of this Agreement, forward to the ADEQ Director all files, public documents and pending applications received by the LA for those delegated Functions and Duties being terminated, a summary status report of those delegated Functions and Duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by the termination of this Agreement.

## APPENDIX B

4. The cancellation provisions of A.R.S. § 38-511, the terms of which are incorporated by reference, shall apply to this Agreement.

### M. TERM OF AGREEMENT

Unless otherwise stated, this Agreement is effective 30 days after written notice of ADEQ's decision to enter into this Agreement. This Agreement shall expire on June 30, 2050. If a new Agreement is not executed by that date, ADEQ and the LA may agree to extend this Agreement by filing an amendment in accordance with Section L of this Agreement.

### N. NAME AND ADDRESS OF PRIMARY CONTACT PERSONS

ADEQ David Lelsz  
Delegations Coordinator  
Arizona Department of Environmental Quality  
1110 W. Washington Street  
Phoenix, AZ 85007  
(602) 771-2212  
dl2@azdeq.gov

LA Fritz Behring, County Manager and LA Director  
Pinal County  
31 N. Pinal St., Bldg.A  
P.O. Box 827  
Florence, AZ-85132  
Tel: (520) 866-6212  
fritz.behring@pinalcountyz.gov

The name of a successor to any of the above-named individuals shall not require the execution of an amendment to this Agreement.

### O. MAINTENANCE OF CONTACT INFORMATION

Annually, beginning in January of 2014, and in January of each year thereafter, ADEQ and the LA shall provide the other party with an updated schedule of contact persons as identified in paragraph N above, and in each of the Appendices A, B, C.

## **APPENDIX B**

### **Appendix C Pinal County Air Quality Management**

#### **A. DELEGATED JURISDICTION AND RESPONSIBILITIES:**

1. As a supplement to the LA existing statutory jurisdiction, ADEQ delegates to the LA permitting and enforcement jurisdiction over all major sources, as defined in A.R.S. § 49-401.01, A.A.C. R18-2-101, and R9-3-101 of the Arizona State Implementation Plan, located within Pinal County, other than those sources within the source categories specified in Subpart B, Paragraph 1, Items a through f of this Appendix. The delegation of jurisdiction under this paragraph shall be suspended and the LA shall have original jurisdiction over the major sources covered by this paragraph under A.R.S. § 49-402.A.1 and B during any period when the LA has approval from the Administrator for new source review and prevention of significant deterioration under the Federal Clean Air Act.
2. The LA shall exercise its statutory authority, as supplemented by this delegation, to meet the requirements and standards established under the Federal Clean Air Act and A.R.S. Title 49, Chapter 3. In administering this delegation, the LA shall meet the personnel qualifications, standards of performance and reporting requirements listed in Subparts C, D and E of this Appendix.

#### **B. RESERVED JURISDICTION AND RESPONSIBILITIES:**

1. Pursuant to A.R.S. § 49-402.A, ADEQ reserves jurisdiction within Pinal County over such sources, permits and violations that pertain to:
  - a. Smelting of metal ore.
  - b. Petroleum refineries.
  - c. Coal fired electrical generating stations
  - d. Portland cement plants.
  - e. Air pollution by portable sources.
  - f. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by A.R.S. Title 49, Chapter 3, Article 5, and consistent with the Federal Clean Air Act.
2. ADEQ further reserves source-wide, source-specific jurisdiction with respect to permits and other regulation of incidental emissions, if the source is one over which ADEQ has reserved jurisdiction, pursuant to Paragraph B.1 of this Subpart, and both the activity that gives rise to the original reservation in favor of ADEQ and the activity that gives rise to the incidental emissions are under the control of the same entity or parent-and-subsidary entities.
3. This Agreement does not preclude ADEQ from asserting jurisdiction over any source pursuant to A.R.S. § 49-402.B.

#### **C. PERSONNEL QUALIFICATIONS:**

## **APPENDIX B**

The following minimum personnel qualifications shall apply to personnel performing the delegated Functions and Duties listed in Subpart A of this Appendix.

1. Permit evaluations shall be performed by, or under the direct supervision of, an engineer qualified through air quality permitting experience or registration as a professional engineer in the State of Arizona.
2. Duties may be performed by personnel with the minimum qualifications of two years of college training in engineering, industrial hygiene, or a closely related field and two years of training, education or experience which demonstrates ability to perform the duties of the position; including 30 semester hours of college-level chemistry, physics, engineering or closely related subjects and two years of technical experience with industrial processes producing pollutants, pollution investigation work or two years experience in general enforcement of air quality related activities.
3. Inspectors must maintain current certification as a Visible Emission Observer, as specified in Arizona Testing Manual Revision F, and attend training equivalent to that specified in EPA Order 3500.1. Training for current inspectors must be completed within 18 months. Training for newly hired inspectors must be completed within 18 months of hiring.

### **D. STANDARDS OF PERFORMANCE:**

The following standards of performance apply, where indicated, to the delegated Functions and Duties listed in Subpart A of this Appendix:

1. Permit Issuance Timeframes
  - a. Permitting activities shall be completed within the licensing time-frames established by the applicable provisions of the Federal Clean Air Act, Code of Federal Regulations, Arizona Revised Statutes, the overall timeframes in Arizona Administrative Code R18-1-525, and locally applicable air quality rules, whichever is more stringent.
  - b. If at any time the LA determines that the overall timeframes in Arizona Administrative Code R18-1-525 may be exceeded for an application, the LA shall, in addition to complying with any other applicable statutory requirements, notify the ADEQ Air Quality Director (AQD) Director as soon as practicable prior to exceeding the timeframes.
2. All permits shall include the elements set forth in A.A.C. R18-2-306, 309 and 325, and shall be processed according to A.A.C. R18-2-304 and 307, or locally applicable air quality rules, whichever is more stringent.
3. All new major sources and major modifications to existing sources shall be processed according to A.A.C. Title 18, Chapter 2, Article 4, as applicable, or locally applicable air quality rules, whichever is more stringent.
4. All permit revisions, reopenings, renewals, transfers, or other permit changes shall be processed according to A.A.C. R18-2-317, 318, 319, 320, 321, 322, and 323 or locally applicable air quality rules, whichever are more stringent.

## APPENDIX B

5. All permitted facilities shall be required to submit annual emission inventories in accordance with A.A.C. R18-2-327 or locally applicable air quality rules, whichever is more stringent.
6. All permitted facilities shall pay annual fees in accordance with A.A.C. R18-2-326 or locally applicable air quality rules.
7. Prior to denying a permit application for a source covered by this Agreement, the LA shall obtain ADEQ's approval of the action.
8. Provisions shall be in place for accelerated permit processing.
9. Unannounced inspections shall be conducted in accordance with an EPA-approved Compliance Monitoring Strategy (CMS Plan). Any source under this delegation not covered by a CMS Plan shall be inspected annually.
10. Initial response to complaints shall be done, to the extent practicable, within 5 days of receipt of the complaint.
11. All compliance and enforcement activities shall be conducted in accordance with ADEQ's Compliance and Enforcement Handbook or locally applicable air quality rules and policies, whichever is more stringent.

### E. REPORTING REQUIREMENTS:

1. The LA shall report the following
  - a. Within 60 days after the execution of this Agreement, and annually thereafter in conjunction with Paragraph 2 of this Subpart, the LA shall file with the ADEQ AQD Director a list of the sources that are permitted by the LA that are covered by this Agreement. The list shall include the following:
    - i. Name of the company operating the facility;
    - ii. Name of the facility;
    - iii. Description of the facilities operation;
    - iv. Physical location, including both address and a general latitude and longitude; and
    - v. For the initial report, an explanation as to why each source is under ADEQ's delegated authority. For subsequent annual reports, this explanation is only required for sources which were not on the previously submitted report.
  - b. The LA shall file an annual report with the ADEQ AQD Director specifying the following for each source covered by this Agreement:
    - i. Number of permits issued, including the date of receipt of the application and the date of permit issuance;
    - ii. Number of notices of violation and the percent of notices handled in a manner consistent with ADEQ compliance and enforcement policy;
    - iii. Number of inspections;
    - iv. Number of complaints received and the percent of complaints receiving initial follow-up within 5 working days;
    - v. Number of escalated enforcement cases; and



## APPENDIX B

- vi. Description and disposition of each escalated enforcement case and amount of penalty assessed and collected, if any.
2. The report required in Paragraph 1.b of this Subpart shall be submitted within 30 days of the anniversary date of this Agreement.
3. The LA shall provide copies of records associated with the activities specified in this Agreement upon request by ADEQ.

### D. AGENCY CONTACT PERSONS:

The following LA employee is responsible for administering the delegated Functions and Duties as specified in this Appendix. The LA shall provide written notice to ADEQ of any successor.

Name: Donald P. Gabrielson  
Title: Director  
Agency: Pinal County Air Quality Department  
Address: P.O. Box 987  
31 North Pinal Street, Building F  
Florence, AZ 85232  
Phone: (520) 866-6929 Fax: (520) 866-6967  
E-Mail: Don.Gabrielson@pinalcountyz.gov

The following ADEQ employee is responsible for administering the delegated Functions and Duties as specified in this Appendix. ADEQ shall provide written notice to the LA of any successor.

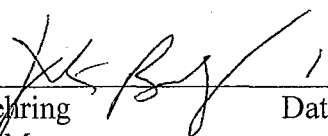
Name: Eric C. Massey  
Title: Director, Air Quality Division  
Agency: Arizona Department of Environmental Quality  
Address: 1110 W. Washington Street  
Phoenix, Arizona 85007  
Phone: (602) 771-2308, Fax: (602) 771-2366  
E-mail: [ecm@azdeq.gov](mailto:ecm@azdeq.gov)


The naming of successor to either of the above-named individuals shall not require the execution of an amendment to this Agreement.

**APPENDIX B**

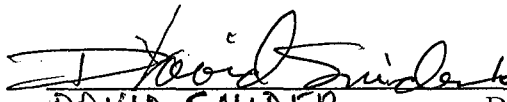
**Signature Page for  
Pinal County  
Delegation Agreement #EV12-0061**

for Pinal County Arizona Department of Environmental Quality

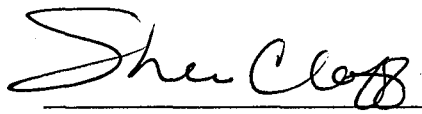
 12/12/12  
Fritz Behring Date  
County Manager

 1/28/13  
Henry R. Darwin Date  
Director

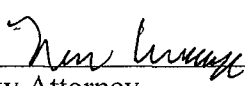
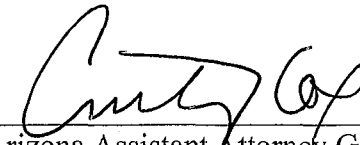
**County Board of Supervisors**

 12/19/12  
DAVID SNIDER Date  
Chairman

**Attest:**

 12/19/12  
Clerk of the Board Date

Pursuant to A.R.S. § 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the County Division of Environmental Health and the Arizona Department of Environmental Quality, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to their respective agencies.

 December 6, 2012  1/10/13  
County Attorney Date Arizona Assistant Attorney General Date



2/3/75

ARIZONA STATE DEPARTMENT OF HEALTH

1 In the Matter of: )  
2 Counties of Apache, )  
3 Navajo, Santa Cruz, )  
4 Yavapai, Arizona )

ORDER

ASSERTION OF JURISDICTION

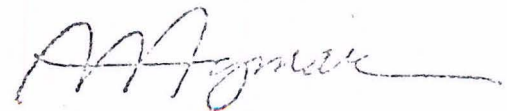
5  
6 On April 19, 1973 the Arizona State Board of Health at a public  
7 meeting passed the following resolution:

8 "The Arizona State Board of Health gives its approval  
9 for the Director of the Division of Air Pollution  
10 Control to designate all existing or potential sources  
11 in the counties of Apache, Navajo, Santa Cruz, and  
12 Yavapai, with the exception of Indian lands, as air  
13 pollution sources to come under the jurisdiction and  
14 control of the State Division of Air Pollution  
15 Control pursuant to A.R.S. § 36-1706.B.

16 PURSUANT to such approval, the Arizona State Division of Air  
17 Pollution Control of the Arizona State Department of Health by the undersign  
18 hereby asserts jurisdiction and control over all existing and potential  
19 sources of air pollution within the statutory boundaries of said counties to  
20 become effective this date.

21 DATED this 8th day of May, 1973 at Phoenix, Arizona.

ARIZONA STATE DEPARTMENT OF HEALTH

22 

23 Arthur A. Aywar  
24 Director  
25 Division of Air Pollution Control

## APPENDIX C

### ARIZONA STATE DEPARTMENT OF HEALTH DIVISION OF AIR POLLUTION CONTROL

#### ORDER OF ASSERTION OF JURISDICTION

On November 29, 1973, the Arizona State Board of Health, at a public meeting, passed the following resolution:

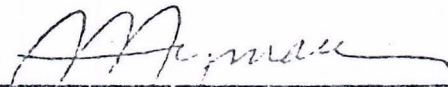
"the Arizona State Board of Health hereby approves the request of the Director of the Division of Air Pollution Control to designate all existing or potential sources in the county of Cochise as air pollution sources to come under the jurisdiction and control of the Division of Air Pollution Control of the Arizona State Department of Health pursuant to A.R.S. Section 36-1706.B."

PURSUANT to such approval, I hereby assert jurisdiction and control over all existing and potential sources of air pollution within the statutory boundaries of Cochise County to become effective as to the following categories of sources (and all equipment associated with such sources) on the dates indicated:

1. Explosive Manufacturing Plants - February 1, 1974
2. Cotton Gins - March 1, 1974
3. Bulk Fuel Storage Facilities - March 15, 1974
4. Food Processing Operations - April 1, 1974
5. Rock, Sand, Gravel and Asphalt Operations - April 15, 1974
6. Incinerators - May 1, 1974
7. Dry Cleaning and Food Processing Operations - May 15, 1974
8. All other existing and potential sources of air pollution - June 1, 1974

DATED this 21st day of January, 1974 at Phoenix, Arizona.

ARIZONA STATE DEPARTMENT OF HEALTH

By 

Arthur A. Aymer, P.E.

Director

Division of Air Pollution Control



JACK WILLIAMS, Governor

J. L. SCHAMADAN, M.D., Director

ORDER OF ASSERTION OF JURISDICTION

Upon the request of the Mohave County Board of Supervisors and pursuant to Arizona Revised Statutes § 36-1706.B, as amended Laws 1973, the Director of the Department of Health Services hereby asserts jurisdiction and control over all existing and future mining facilities with ore concentrators and/or ore roasters, and cotton gins located within the statutory boundaries of Mohave County to become effective November 1, 1974.

DATED this 21st day of October, 1974.

JAMES L. SCHAMADAN, M.D.  
Director  
Department of Health Services

By James D. Goff, P.H.  
James D. Goff, P.H.  
Assistant Director  
Environmental Health Services



APPENDIX C

In the Matter of:

SOURCES OF AIR POLLUTION  
LOCATED IN MOHAVE COUNTY

ORDER ASSERTING  
JURISDICTION

IT IS HEREBY ORDERED, pursuant to the authority granted to me by A.R.S. § 36-1706.B, that the following sources and/or potential sources of air pollution in ~~Mohave County~~ are designated as State sources and such sources shall be under the sole and exclusive jurisdiction and control of the Arizona Department of Health Services:

1. New and existing nonpoint sources for which there are emission limitations or standards of performance on the date of this promulgation in Article 4, Chapter 3, Title 9 of the Administrative Rules and Regulations, a copy of which has been attached hereto and is incorporated herein by reference.

2. Existing stationary point sources for which there are emission limitations or standards of performance on the date of this promulgation in Article 5, Chapter 3, Title 9 of the Administrative Rules and Regulations, a copy of which has been attached hereto and is incorporated herein by reference.

3. New stationary point sources for which there are emission limitations or standards of performance on the date of this promulgation in Article 8, Chapter 3, Title 9 of the Administrative Rules and Regulations, a copy of which has been attached hereto and is incorporated herein by reference.

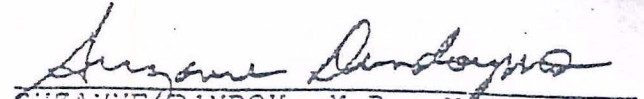
4. New and existing point and nonpoint sources which emit hazardous air pollutants for which there are emission limitations or standards of performance on the date of this promulgation in Article 9, Chapter 3, Title 9 of the



APPENDIX C

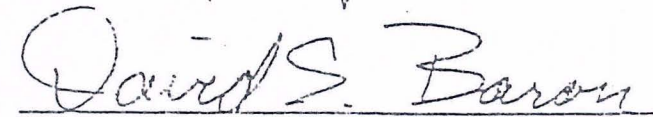
Administrative Rules and Regulations, a copy of which has been attached hereto and is incorporated herein by reference.

DATED this 5 day of June, 1980.

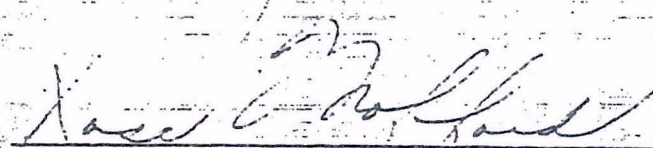
  
SUZANNE DANDOY, M.D., M.P.H.  
Director

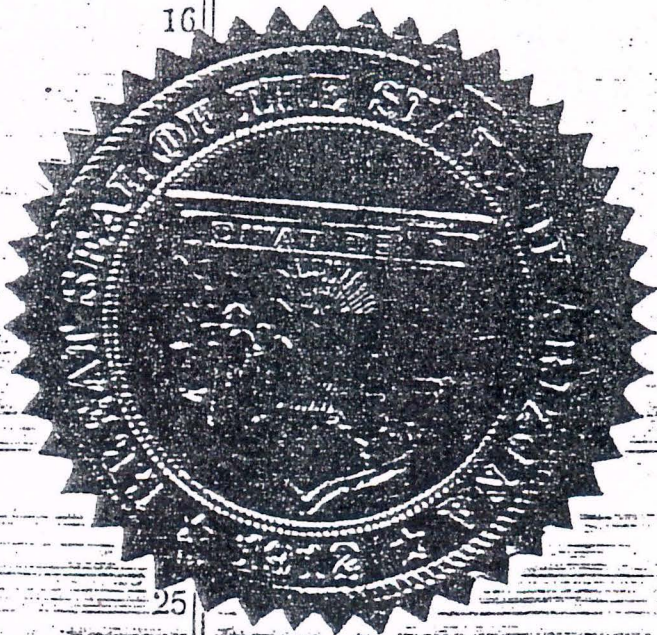
APPROVED AS TO FORM

This 5th day of June, 19 80.

By:   
Assistant Attorney General

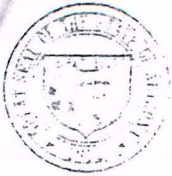
Filed in the Office of the  
Secretary of State this 6th  
day of June, 1980.

  
ROSE MOFFORD, Secretary of State





APPENDIX C



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

EVAN MECHAM, GOVERNOR

Gerald H. Teletzke, Ph.D., Director

August 13, 1987

Coconino County Board of Supervisors  
219 East Cherry  
Flagstaff, AZ 86001

ATTENTION: Paul Babbitt, Chairman

Dear Mr. Babbitt:

I am writing to you in response to the attached letter from Catherine Eden, County Manager of Coconino County, which transmits the county's decision not to accept delegation on air pollution. It is my understanding that on May 14, 1987, you, as Chairman of the Board of Supervisors, reaffirmed this decision at the Department of Health Services' meeting on county delegation agreements.

Under A.R.S. §49-402, the Director of the Arizona Department of Environmental Quality, must assert state jurisdiction for air quality control under these circumstances. Through this letter, I hereby assert such jurisdiction.

May I take this opportunity to thank you for your support in past years and be assured that the Department of Environmental Quality will strive to continue a high level of air quality protection and public education in your county. Please do not hesitate to contact me at 257-2300 or Lee Lockie, Assistant Director at 257-2308 if we can be of further assistance to you as we implement this state program.

The DEQ air quality engineer in Flagstaff is Mike Howeth and he can be reached at 779-0313.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerald H. Teletzke", is written over the word "Sincerely,".

Gerald H. Teletzke, Ph.D.  
Director

GHT/LL/lr

ATTACHMENT

cc: Lee Lockie  
Carroll Dekle  
Mike Howeth  
Doris Gates

*The Department of Environmental Quality is An Equal Opportunity Affirmative Action Employer*

## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Rose Mofford, Governor  
XXXXXXXXXXXXXXXXXXXX  
GERALD H. TELETZKE, PH.D., DIRECTOR

April 13, 1988

Gila County Board of Supervisors  
Gila County Courthouse  
1400 East Ash  
Globe, Arizona 85501

ATTN: Vernon R. France, Chairman

Dear Mr. France:

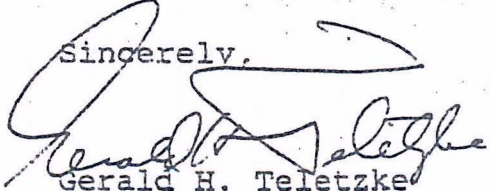
I am writing to you in response to the April 7, 1988 letter and resolution from Rose Marie Phillips, which transmits the county's decision not to accept delegation on air pollution.

Under A.R.S. 49-402, the Director of the Arizona Department of Environmental Quality, must assert state jurisdiction for air quality control under these circumstances. Through this letter, I hereby assert such jurisdiction.

May I take this opportunity to thank you for your support in past years and be assured that the Department of Environmental Quality will strive to continue a high level of air quality protection and public education in your county. Please do not hesitate to contact me at 257-6917 or William Watson, Acting Assistant Director, Office of Air Quality, at 257-2308, if we can be of further assistance to you as we implement this state program.

The Permits and Compliance Section can be reached at 257-2285.

Sincerely,

  
Gerald H. Teletzke  
Director

GHT:CLD:ds

Attachment

c: William Watson  
Carroll L. Dekle  
David Chelgren



## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

EVAN MECHAM, GOVERNOR  
GERALD H. TELETZKE, PH.D., DIRECTOR  
Rose Mofford, Acting Governor

March 28, 1988

Yuma County Board of Supervisors  
168 South 2nd Avenue  
Yuma, AZ 85364

ATTN: Clyde Cuming, Chairman

Dear Mr. Cuming:

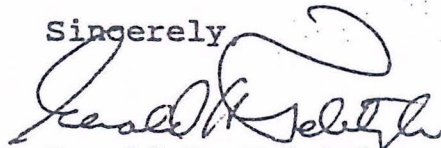
I am writing to you in response to the attached letter from Larry A. Leach, which transmits the county's decision not to accept delegation on air pollution.

Under A.R.S. §49-402, the Director of the Arizona Department of Environmental Quality, must assert state jurisdiction for air quality control under these circumstances. Through this letter, I hereby assert such jurisdiction.

May I take this opportunity to thank you for your support in past years and be assured that the Department of Environmental Quality will strive to continue a high level of air quality protection and public education in your county. Please do not hesitate to contact me at 257-6917 or William Watson, Acting Assistant Director, Office of Air Quality, at 257-2308, if we can be of further assistance to you as we implement this state program.

The Permits & Compliance Section can be reached at 257-2285.

Sincerely,



Gerald H. Teletzke  
Director

GHT:CLD:pf

Attachment

cc: William Watson  
Carroll Dekle



CONTRACT	
NO. <u>CT-DE-13 00000 00000 00000 552</u>	
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

## DELEGATION AGREEMENT

Between

Arizona Department of Environmental Quality

And

Pima County, hereinafter, County, a political subdivision of the State of Arizona, acting by and through the Pima County Department of Environmental Quality and the Pima County Health Department

Delegation Agreement # EV12-0060

Whereas, Arizona Revised Statutes (A.R.S.) § 49-107, authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, or county health department, any functions, powers, and duties, hereinafter, Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local environmental agency, or county health department and

Whereas, the Pima County Department of Environmental Quality and the Pima County Health Department are the local environmental agency and county health department, hereinafter, LA, as set forth in A.R.S. § 49-107, and

Whereas, A.R.S. §§ 11-201(A)(3) and 11-952 authorize the County Board of Supervisors (and by delegation the LA, where the LA is a local environmental agency or health department) to enter into contracts as necessary to assist LA in exercising its powers, and

Whereas, the LA deems that it is in its best interests to accept such delegation,

Therefore, the Director of ADEQ delegates to the Pima County Department of Environmental Quality as LA, and the LA accepts the delegation of those Functions and Duties described in the Appendices of this Delegation Agreement, hereinafter Agreement, (Appendix A of this Agreement for Wastewater and Drinking Water Delegations, except Subpart A, Paragraph 11, Public and Semipublic Swimming Pools, Appendix B of this Agreement for Solid Waste Delegations, Appendix C of this Agreement for Air Quality Delegations and Appendix D of this Agreement for Hazardous Waste Delegations) on behalf of ADEQ and in accordance with the terms and conditions specified in this Agreement.

Further, the Director of ADEQ delegates to the Pima County Health Department as LA, and the LA accepts the delegation of those Functions and Duties described in Appendix A, Subpart A, Paragraph 11, Public and Semipublic Swimming Pools, of this Agreement on behalf of ADEQ and in accordance with the terms and conditions specified in this Agreement.

## APPENDIX D

### A. DELEGATED FUNCTIONS AND DUTIES

The Functions and Duties that are delegated to the LA by this Agreement are identified in Sections A through N, and in Appendices A, B, C and D of this Agreement. ADEQ statutes, rules, policies and guidance shall be used in implementing the delegated Functions and Duties. The Functions and Duties not specifically delegated by this Agreement are retained by ADEQ.

### B. STANDARDS OF PERFORMANCE

1. The standards of performance required of the LA to perform the delegated Functions and Duties and to fulfill the terms of this Agreement are those provided by statute and duly adopted rule, and are generally the same as those required of ADEQ personnel. The performance of the delegated Functions and Duties by the LA shall conform to ADEQ statutes, rules, policies and guidance. Program-specific standards of performance are identified in the Appendices of this Agreement.
2. ADEQ shall provide the LA with periodic training upon the request of the LA.
3. ADEQ shall provide operating guidance for use in implementing the terms of this Agreement concurrent with the execution of this Agreement. ADEQ will use its best efforts to provide the LA with new and/or updated guidance prior to or shortly after the effective date of the guidance. The guidance shall, at a minimum, include Engineering Bulletins, program guidance memoranda, substantive policy statements, copies of all applicable forms, policies and procedures, and other material that may assist the LA to carry out the delegated Functions and Duties specified in this Agreement. The LA may contact ADEQ for clarification or guidance on procedural or technical issues.
4. In the event of any dispute between the LA and a third party regarding the LA's interpretation or application of ADEQ statutes, rules, policies and guidance, ADEQ shall, if requested by the LA, provide timely assistance and direction to the LA.

### C. FEE AUTHORITY AND TYPES OF FEES

1. To the extent permitted by law, ADEQ delegates the authority to collect fees under its established fee rules to assure the LA may accomplish delegated Functions and Duties according to the applicable standards.

The LA shall annually report delegated program authority fees to ADEQ on or before September 1. The report shall list all permits issued that year and the total revenue for each general permit category. ADEQ shall provide the LA with a template for the report. The report shall be delivered to ADEQ Central Office, 1110 West Washington Avenue, Phoenix, Arizona 85007, to the Office of the Chief Financial Officer.

## APPENDIX D

Unless otherwise provided by statute, fees imposed by the LA shall be limited to the cost of service, including all direct and indirect costs.

2. Fees are authorized by, and shall conform to, the requirements of state laws and rules and county ordinances.
3. All fees collected by the LA pursuant to this Agreement shall be retained by the LA as consideration for performing the Functions and Duties described in this Agreement.

### D. PERSONNEL QUALIFICATIONS

The required personnel qualifications for exercising each Program's delegated Functions and Duties are identified in the corresponding Appendix to this Agreement.

### E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. The LA agrees to maintain records relating to its performance of the delegated Functions and Duties as specified in this Agreement for a period of ten years from the date of complete resolution of any technical dispute, contested case, action against a party, or any appealable agency action, unless a longer period is required by statute or rule.
2. The LA agrees to create and submit reports related to its performance of the delegated Functions and Duties as specified in this Agreement. The reports shall be created and submitted to ADEQ in accordance with the specifications in the Appendices to this Agreement.

### F. OVERSIGHT ACTIVITIES

1. ADEQ may accompany LA personnel on inspections and may review all records relating to the LA's performance of the delegated Functions and Duties as set forth in this Agreement. ADEQ shall provide prior notice to the LA of its intent to accompany LA personnel on inspections. LA personnel may accompany ADEQ inspectors on inspections for purposes of training, information sharing or coordinating LA and ADEQ activities. The LA shall provide prior notice to ADEQ of its request to accompany ADEQ inspectors on inspections.
2. Periodically, ADEQ shall conduct an evaluation of the LA's performance of the delegated Functions and Duties. Either party to this Agreement may request that the frequency of evaluations be increased. The initial results of all program evaluations shall be in writing and shall be communicated to the LA in a draft report. The LA is entitled to comment on the draft report. After ADEQ's response to comments, ADEQ shall finalize the report and transmit a copy to the LA. The final reports of all program evaluations are

## APPENDIX D

public documents pursuant to A.R.S. § 39-121 *et seq.*

### G. DELEGATION OF ENFORCEMENT AUTHORITIES; LOCAL AGENCY OBLIGATIONS

1. This Agreement is subject to the provisions of A.R.S. § 49-106.
2. As a supplement to any independent statutory authority LA may have, LA is hereby delegated the enforcement authorities pursuant to A.R.S. §§ 44-1307, 49-141, 49-142, 49-261, 49-262, 49-354 (A) and (B), 49-460 through 463, 49-781 through 783, 49-791, 49-922(B), 49-923 and 49-924, as applicable to the delegated Functions and Duties specified in this Agreement.
3. The LA shall be responsible for initiating timely and appropriate enforcement actions for alleged violations by individuals and facilities affected under this Agreement. The LA shall make compliance determinations and conduct enforcement actions in accordance with ADEQ's Compliance and Enforcement Handbook. The LA shall use inspection checklists and boilerplate documents provided by ADEQ or such documents that contain the same content as those documents provided by ADEQ.
4. ADEQ retains its authority to take an enforcement action against any individual or facility, the regulation of which is specified in this Agreement. At its discretion, ADEQ may refrain from exercising such authority if ADEQ determines that the enforcement action taken by the LA is timely, appropriate and effective. Except in a case involving an immediate threat to the public health, safety or environment, ADEQ shall give the LA 30 days prior written notice of its intent to initiate an enforcement action if the LA fails to initiate such enforcement action. In a case involving an immediate threat to the public health, safety or environment, ADEQ shall make its best efforts to notify the LA prior to its undertaking such an enforcement action.
5. Where appropriate, and if there is no conflict with applicable environmental statutes and rules, LA may conduct enforcement action using the authority provided by A.R.S. Title 36 or A.R.S. Title 49, Chapter 3, Article 3. Nothing herein shall preclude LA from independently initiating enforcement action pursuant to its own authority under A.R.S. §§ 36-602, 36-603, 49-143, and 49-144, or any other civil or criminal statute or local ordinance, or from pursuing any other available legal or equitable remedy.
6. In those cases where the Attorney General has exclusive authority to bring an action to collect civil penalties, ADEQ shall timely notify the Attorney General of the LA's intent to initiate an enforcement action and such enforcement action shall be coordinated among the LA, ADEQ, the Attorney General and the LA's County Attorney.
7. In cases of civil enforcement, the LA and ADEQ shall coordinate litigation and settlements, unless the LA has independent statutory enforcement authority. The LA and ADEQ may act as co-plaintiffs in order to maximize resources.

## APPENDIX D

8. Civil penalties assessed and collected under the authority of ADEQ's statutory enforcement authority shall be in the name of the State of Arizona, and shall be forwarded to ADEQ with copies of court documentation for deposit into the state general fund in accordance with A.R.S. Title 35, Article 3.
9. ADEQ may execute compliance initiatives directed at certain classes of violations or facilities that are alleged to be in violation of applicable statutes or rules. To the best of its ability, the LA agrees to cooperate in the successful execution of such compliance initiatives that involve facilities, the regulation of which has been delegated in by this Agreement.

### H. APPEALS OF LOCAL AGENCY ACTIONS

1. Unless otherwise provided by statute, LA shall conduct administrative hearings for appeals of licensing decisions and enforcement actions taken by the LA under the delegated Functions and Duties of this Agreement in accordance with the A.R.S. Title 41, Chapter 6 Administrative Procedures, A.R.S. § 41-1092 *et seq.*, and the Office of Administrative Hearings, Rules of Procedure, Arizona Administrative Code (A.A.C.) R2-19-101 *et seq.* The LA shall use administrative law judges provided by the Office of Administrative Hearings (OAH). If an OAH administrative law judge conducts an administrative hearing under this Agreement, ADEQ shall pay for the LA's OAH hearing related costs. The LA, the LA's County Attorney, or counsel retained by LA, shall represent the LA at all administrative hearings. Nothing in this agreement mandates that the LA contract for the services of administrative law judges with respect to administrative hearings involving matters arising from the LA's independent authority, functions and duties.
2. Pursuant to A.R.S. § 12-904, if the OAH administrative law judge grants or denies the relief requested, either the appellant or the LA may file a complaint in superior court within 35 days after the decision.
3. The LA shall provide ADEQ an annual report by July 31<sup>st</sup> of appeals filed and their final resolution.

### I. LICENSING AUTHORITY

1. The LA agrees to comply with the overall time frames set forth in A.A.C. R18-1-525 when issuing licenses pursuant to delegated Functions and Duties under this Agreement. The LA shall provide a quarterly report to ADEQ indicating the number of licenses issued that quarter, by general type of license, and the number of licenses that exceeded the licensing time frame for the licensing decision. If the LA fails to meet a licensing time frame, the quarterly report shall indicate the reason(s) why the licensing time frame was missed and the corrective action the LA has taken. If the LA demonstrates a pattern of failing to meet the required licensing time frames, ADEQ shall assist the LA in

## APPENDIX D

correcting the deficiencies in LA's licensing procedures.

2. The LA shall submit the quarterly reports described in subsection 1 of this Section to the ADEQ primary contact person designated in Appendices A through D of this Agreement.

### J. LOCAL AGENCY INDEPENDENT AUTHORITY; SUBDELEGATION

1. ADEQ's delegation of Functions and Duties to a municipality within the LA's boundaries shall in no way infringe upon, reduce or usurp the LA's right, authority and responsibility to implement non-delegated authorized activities and programs.
2. The LA may not sub-delegate Functions and Duties delegated pursuant to this Agreement to another local government agency or political subdivision without obtaining the prior written approval of the Director of ADEQ.
3. ADEQ shall provide the LA a copy of any delegation agreement it has entered into with a municipality, located in whole or in part within the LA's boundaries.

### K. CONFLICT RESOLUTION PROCEDURES

The parties may resolve a conflict arising under this Agreement through arbitration. If the parties invoke this provision, the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

### L. AMENDMENT AND TERMINATION PROCEDURES

1. Either party may seek to amend this Agreement. An amendment to this Agreement shall be in writing, shall be executed by the Director of ADEQ, the Director of the LA, the Chairman of the LA's Board of Supervisors, the Clerk of the LA's Board of Supervisors, and shall be approved as to form by the Attorney General and the LA's County Attorney. Amendments shall comply with the provisions in A.R.S. § 41-1081. Amendments to this Agreement shall be effective 30 days after written notice of ADEQ's final decision to amend this Agreement.
2. This Agreement may be terminated, in whole or in part, by either party upon providing 30 days prior written notice by certified mail to the other party and in compliance with subsection 3 of this section.
3. The LA shall, prior to the termination of all or part of this Agreement, forward to the ADEQ Director all files, public documents and pending applications received by the LA for those delegated Functions and Duties being terminated, a summary status report of those delegated Functions and Duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by the termination of this



## APPENDIX D

Agreement.

4. The cancellation provisions of A.R.S. § 38-511, the terms of which are incorporated by reference, shall apply to this Agreement.

### M. TERM OF AGREEMENT

Unless otherwise stated, this Agreement is effective 30 days after written notice of ADEQ's decision to enter into this Agreement. This Agreement shall expire on June 30, 2050. If a new Agreement is not executed by that date, ADEQ and the LA may agree to extend this Agreement by filing an amendment in accordance with Section L of this Agreement.

### N. NAME AND ADDRESS OF PRIMARY CONTACT PERSONS

ADEQ David Lelsz

Delegations Coordinator  
Arizona Department of Environmental Quality  
1110 W. Washington Street  
Phoenix, AZ 85007  
(602) 771-2212  
dl2@azdeq.gov

LA For Appendices A (except Subpart A, Paragraph 11); B; C; and D

Ursula Kramer, Director  
Pima County Department of Environmental Quality  
33 North Stone Avenue, Suite 700  
Tucson, AZ 85701  
(520) 243-7454  
Ursula.kramer@pima.gov

For Appendix A (Subpart A, Paragraph 11 – Public & Semi-public Swimming Pools)

Dr. Francisco A.R. Garcia, Director  
Pima County Health Department  
The Dr. Herbert K. Abrams Public Health Center  
3950 S. Country Club Road  
Tucson, AZ 85714  
Francisco.Garcia@pima.gov

The name of a successor to any of the above-named individuals shall not require the execution of an amendment to this Agreement.

**Appendix C  
Pima County  
Air Quality Management**

**A. DELEGATED JURISDICTION AND RESPONSIBILITIES:**

1. As a supplement to the LA's existing statutory jurisdiction, ADEQ delegates to the LA permitting and enforcement jurisdiction over the Tucson Electric Power Company, H. Wilson Sundt Generating Station (Sundt Generating Station).
2. The LA shall exercise its statutory authority, as supplemented by this delegation, to meet the requirements and standards established under the Federal Clean Air Act and A.R.S. Title 49, Chapter 3. In administering this delegation, the LA shall meet the personnel qualifications, standards of performance and reporting requirements listed in Subparts C, D and E of this Appendix.

**B. RESERVED JURISDICTION AND RESPONSIBILITIES:**

This Agreement does not preclude ADEQ from asserting jurisdiction over any source pursuant to A.R.S. § 49-402.B.

**C. PERSONNEL QUALIFICATIONS:**

The following minimum personnel qualifications shall apply to personnel performing the delegated Functions and Duties listed in Subpart A of this Appendix.

1. Permit evaluations shall be performed by, or under the direct supervision of, an engineer qualified through air quality permitting experience or registration as a professional engineer in the State of Arizona.
2. Duties may be performed by personnel with the minimum qualifications of two years of college training in engineering, industrial hygiene, or a closely related field and two years of training, education or experience which demonstrates ability to perform the duties of the position; including 30 semester hours of college-level chemistry, physics, engineering or closely related subjects and two years of technical experience with industrial processes producing pollutants, pollution investigation work or two years experience in general enforcement of air quality related activities.
3. Inspectors must maintain current certification as a Visible Emission Observer, as specified in Arizona Testing Manual Revision F, and attend training equivalent to that specified in EPA Order 3500.1. Training for current inspectors must be completed within 18 months. Training for newly hired inspectors must be completed within 18 months of hiring.

**D. STANDARDS OF PERFORMANCE:**



## APPENDIX D

The following standards of performance apply, where indicated, to the delegated Functions and Duties listed in Subpart A of this Appendix:

1. Permit Issuance Timeframes
  - a. Permitting activities shall be completed within the licensing time-frames established by the applicable provisions of the Federal Clean Air Act, Code of Federal Regulations, Arizona Revised Statutes, the overall timeframes in Arizona Administrative Code R18-1-525, and locally applicable air quality rules, whichever is more stringent.
  - b. If at any time the LA determines that the overall timeframes in Arizona Administrative Code R18-1-525 may be exceeded for an application, the LA shall notify the ADEQ Air Quality Director (AQD) Director as soon as practicable prior to exceeding the timeframes.
2. All permits shall include the elements set forth in A.A.C. R18-2-306, 309 and 325, and shall be processed according to A.A.C. R18-2-304 and 307, or locally applicable air quality rules, whichever is more stringent.
3. All major modifications to the Sundt Generating Station shall be processed according to A.A.C. Title 18, Chapter 2, Article 4, as applicable, or locally applicable air quality rules, whichever is more stringent.
4. All permit revisions, reopenings, renewals, transfers, or other permit changes shall be processed according to A.A.C. R18-2-317, 318, 319, 320, 321, 322, and 323 or locally applicable air quality rules, whichever are more stringent.
5. The Sundt Generating Station shall be required to submit annual emission inventories in accordance with A.A.C. R18-2-327 or locally applicable air quality rules, whichever is more stringent.
6. The Sundt Generating Station shall be required to pay annual fees in accordance with A.A.C. R18-2-326 or locally applicable air quality rules.
7. Prior to denying a permit application for the Sundt Generating Station, the LA shall obtain ADEQ's approval of the action.
8. Provisions shall be in place for accelerated permit processing.
9. Unannounced inspections shall be conducted in accordance with an EPA-approved Compliance Monitoring Strategy (CMS Plan).
10. Initial response to complaints shall be done, to the extent practicable, within 5 days of receipt of the complaint.
11. All compliance and enforcement activities shall be conducted in accordance with ADEQ's Compliance and Enforcement Handbook or locally applicable air quality rules and policies, whichever is more stringent.

### E. REPORTING REQUIREMENTS:

1. The LA shall file an annual report with the ADEQ AQD Director specifying the following for the Sundt Generating Station:
  - i. Number of permits issued, including the date of receipt of the application and the date of permit issuance;

## APPENDIX D

- ii. Number of notices of violation and the percent of notices handled in a manner consistent with ADEQ compliance and enforcement policy;
  - iii. Number of inspections;
  - iv. Number of complaints received and the percent of complaints receiving initial follow-up within 5 working days;
  - v. Number of escalated enforcement cases; and
  - vi. Description and disposition of each escalated enforcement case and amount of penalty assessed and collected, if any.
2. The report required in Paragraph 1 of this Subpart shall be submitted within 30 days of the anniversary date of this Agreement.
3. The LA shall provide copies of records associated with the activities specified in this Agreement upon request by ADEQ.

### D. AGENCY CONTACT PERSONS:

The following LA employee is responsible for administering the delegated Functions and Duties as specified in this Appendix. The LA shall provide written notice to ADEQ of any successor.

Name: Ursula Kramer  
Title: Director  
Agency: Pima County Department of Environmental Quality  
Address: 33 North Stone Avenue, Suite 700  
Tucson, AZ 85701  
Phone: (520) 243-7454 Fax: (520) 838-7432  
E-Mail: [Ursula.Kramer@deq.pima.gov](mailto:Ursula.Kramer@deq.pima.gov)

The following ADEQ employee is responsible for administering the delegated Functions and Duties as specified in this Appendix. ADEQ shall provide written notice to the LA of any successor.

Name: Eric C. Massey  
Title: Director, Air Quality Division  
Agency: Arizona Department of Environmental Quality  
Address: 1110 W. Washington Street  
Phoenix, Arizona 85007  
Phone: (602) 771-2308, Fax: (602) 771-2366  
E-mail: [ecm@azdeq.gov](mailto:ecm@azdeq.gov)

The naming of successor to either of the above-named individuals shall not require the execution of an amendment to this Agreement.

APPENDIX D

Signature Page for  
Pima County  
Delegation Agreement # EV12-0060

Pima County Department of Environmental Quality

Ursula Kramer 1.8.13  
Ursula Kramer Date  
Director

Pima County Health Department

Dr. Francisco A.R. Garcia Date  
Director

Arizona Department of Environmental Quality

Henry R. Darwin 2/19/13 Date  
Director

County Board of Supervisors

Chairman FEB 05 2013  
Chairman Date

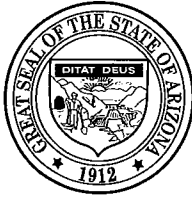
Attest:

Ruben Brizuela FEB 05 2013  
Clerk of the Board Date

Pursuant to A.R.S. § 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the County Department of Health Services and the Arizona Department of Environmental Quality, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to their respective agencies.

County Attorney 1/7/13 Date  
County Attorney

Arizona Assistant Attorney General 3/14/13 Date  
Arizona Assistant Attorney General



Janice K. Brewer  
Governor

**APPENDIX D**  
**ARIZONA DEPARTMENT**  
**OF**  
**ENVIRONMENTAL QUALITY**

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



Henry R. Darwin  
Director

RVZ 11

13A-A006-DEQ

U.S. Mail

August 3, 2012

Ursula Kramer, Director  
Pima County Department of Environmental Quality  
150 West Congress Street  
Tucson, AZ 85701

Re: Rosemont Copper Project

Dear Ms. Kramer,

In October of 2011, ADEQ was approached by the Rosemont Copper Company (Rosemont) regarding the air quality permitting of the Rosemont Copper Project, an open pit copper mine approximately 30 miles southeast of Tucson on State Highway 83. Rosemont requested a meeting with ADEQ to discuss the denial of their Class II permit application by the Pima County Department of Environmental Quality (PDEQ), and to request clarification regarding the applicability of regulations contained in the Arizona and Pima County State Implementation Plans (SIPs).

As you are aware, the permitting requirements in both the Arizona and Pima County SIPs date back to the 1970s and 1980s. Rosemont has reviewed both the Pima County SIP and the Arizona SIP in detail and has expressed a concern about substantial ambiguity in the permitting rules regarding jurisdiction, especially considering the age of the regulations and the lack of official records. The two main issues that impact the Rosemont Copper Project are permitting jurisdiction and the applicability of Pima SIP Rule 504. Additional ambiguity also results from significant revisions to the Arizona Revised Statutes, Arizona Administrative Code, and Pima County Code since the SIPs were approved.

ADEQ finds PDEQ's actions on the Rosemont permit have caused significant regulatory uncertainty by denying a permit application based on the lack of identification of applicable SIP requirements, especially since the identification of those requirements has not been required of any previous applicant for at least a decade. On July 5, 2012, the Arizona Superior Court in Pima County ruled that PDEQ's action to deny Rosemont's application was both arbitrary and capricious. Such a ruling highlights the regulatory uncertainty that has been caused by PDEQ's decision.

Due to the confusion and uncertainty caused by the inappropriate denial of the Rosemont permit, to ensure that duplicative installation air quality permits are not required of the facility, and pursuant to A.R.S. § 49-402(B) and R9-3-1101 of the Arizona SIP, ADEQ is hereby asserting complete air quality jurisdiction, effective immediately, over the Rosemont Copper Project, an open pit copper mine approximately 30 miles southeast of Tucson on State Highway 83.

ADEQ's action creates regulatory certainty regarding which agency has jurisdiction over the mine, and will also resolve any questions regarding the applicability of Pima County SIP Rule 504, as the


Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

Department requires all new facilities to conduct ambient dispersion modeling to ensure the protection of the National Ambient Air Quality Standards. The air permit proposed by ADEQ will ensure that Rosemont meets all federal, state, and local requirements. In addition, the Department's proposed permit requires superior environmental protection as compared to PDEQ's August 29, 2011 proposed permit, through the installation and operation of the following enhanced emission controls at the mine:

- State-of-the-art high-efficiency cartridge filters to reduce PM<sub>10</sub> from process equipment;
- Redesigning of the primary crushing and lime systems for process optimization and fewer emissions;
- Increased use of new, less polluting engines in on-site vehicles; and
- Paving of 3.1 miles of road used within the property.

As required by A.R.S. § 49-402(B), ADEQ and PDEQ have conferred by phone regarding the assertion of jurisdiction on August 3, 2012. If you have any questions, please contact Trevor Baggione, Deputy Director of the Air Quality Division at (602) 771-2321, or me at (602) 771-2308.

Sincerely,



Eric C. Massey, Director  
Air Quality Division

# Arizona State Legislature

Bill Number Search:  



Fiftieth Legislature - Second Regular Session

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## 49-444. [Notice of hearing; publication; service](#)

A. Any notice of hearing required by this chapter shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county.

B. If the hearing involves any violation of rules adopted pursuant to this chapter, or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order shall be served pursuant to title 41, chapter 6, article 10.



ADEQ  
AIR QUALITY DIVISION

14 MAY 29 AM 10:41

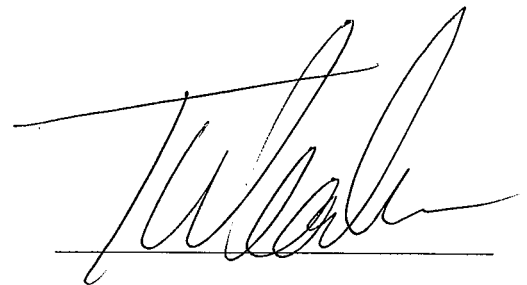
# THE ARIZONA REPUBLIC

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS.

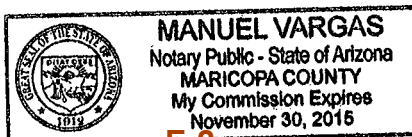
Tabitha Weaver, being first duly sworn, upon oath deposes and says: That she is a Sr. legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

May 23, 27, 2014



Sworn to before me this  
27<sup>th</sup> day of  
May A.D. 2014



**PUBLIC NOTICE**  
**ARIZONA DEPARTMENT OF**  
**ENVIRONMENTAL QUALITY**  
**PUBLIC HEARING ON**  
**SUPPLEMENT TO**  
**ARIZONA STATE**  
**IMPLEMENTATION PLAN**  
**(SIP) REVISION**

The Arizona Department of Environmental Quality (ADEQ) will hold a public hearing to receive comments on a supplement to its October 29, 2012 State Implementation Plan (SIP) Revision addressing Federal New Source Review (NSR) requirements (2012 SIP Revision). ADEQ is also accepting written comments on the supplement.

The supplement provides an explanation of how jurisdiction to administer NSR is divided among ADEQ and various county agencies, including the Maricopa County Air Quality Department, Pima County Department of Environmental Quality and Pinal County Air Quality Control District. It is designed to satisfy the requirement for 40 C.F.R. § 51.162 to identify the State or local agency which will be responsible for meeting the requirements of 40 C.F.R. Part 51, Subpart I, "Review of New Sources and Modifications" in each area of the State.

Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-404, 49-406 and the Code of Federal Regulation, Title 40, §§ 51.102 through 51.104, and Appendix V to part 51, this supplement to a revision to Arizona's SIP must be submitted to the Environmental Protection Agency (EPA) by the director of ADEQ on behalf of the governor.

A public hearing on the supplement to the 2012 SIP Revision will be held on Monday, June 30, 2014, at 2:00 p.m. at 1110 W. Washington St., Phoenix, AZ 85007, Room 3100B. Written comments are due by midnight on June 30, 2014.

Written comments should be addressed, faxed, or e-mailed to:  
Steven J. Burr  
Air Quality Division, Legal Support Section  
ADEQ 1110 W. Washington St. Phoenix, AZ 85007  
FAX: (602) 771-2366  
E-Mail: sbs@azdeq.gov

A copy of the draft SIP documentation can be found online at <http://www.azdeq.gov/environ/air/plan/notes.html#nsr>. A copy is also available for review at the following location:  
ADEQ 1110 W. Washington St., Phoenix, Arizona 85007  
ATTN: Records Center (602) 771-4380  
E-Mail: [recordscenter@azdeq.gov](mailto:recordscenter@azdeq.gov)  
Pub: May 23, 27, 2014



## Air Quality Division

## Public Hearing Presiding Officer Certification

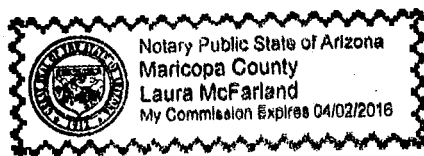
I, Danielle Hazeltine, the designated Presiding Officer, do hereby certify that the public hearing held by the Arizona Department of Environmental Quality was conducted on June 30, 2014, at the Arizona Department of Environmental Quality, Conference Room 3100B, 1110 West Washington Street, Phoenix, Arizona, in accordance with public notice requirements by publication in *The Arizona Republic* beginning May 23, 2014. Furthermore, I do hereby certify that the public hearing was recorded from the opening of the public record through concluding remarks and adjournment, and the transcript provided contains a full, true, and correct record of the above-referenced public hearing.

Dated this 30 day of June 2014.

Danielle Hazeltine

State of Arizona       )  
                                  ) ss.  
County of Maricopa    )

Subscribed and sworn to before me on this 30 day of June 2014.



Notary Public

My commission expires: 4/2/2016



**AIR QUALITY DIVISION**

**PUBLIC HEARING ON THE NEW SOURCE REVIEW  
NOTICE OF PROPOSED RULEMAKING  
AND SIP REVISION**

PLEASE NOTE THE MEETING LOCATION AND TIME:

Arizona Department of Environmental Quality  
Conference Room 250  
1110 W. Washington St.  
Phoenix, AZ 85007

---

**Pursuant to 40 CFR § 51.102 notice is hereby given that the above referenced meeting is open to the public.**

1. Welcome and Introductions
2. Purposes of the Oral Proceeding
3. Procedure for Making Public Comment
4. Brief Overview of the proposed SIP Revisions
5. Question and Answer Period
6. Oral Comment Period
7. Adjournment of Oral Proceeding

Copies of the proposal are available for review at the Arizona Department of Environmental Quality (ADEQ) Library, 1110 W. Washington St., Phoenix, Arizona. For additional information regarding the hearing please call Steve Burr, ADEQ Air Quality Division, at (602) 771-4251 or toll-free at 1-800-234-5677, Ext. 771-4251.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Dan Flukas at (602) 771-4795 or 1-800-234-5677, Ext. 771-4795. Requests should be made as early as possible to allow sufficient time to make the arrangements for the accommodation. This document is available in alternative formats by contacting ADEQ TDD phone number at (602) 771-4829.



# Air Quality Division Sign-In Sheet

## Please Sign In

SUBJECT NSE SIP Supplement DATE 6/30/2014

	<u>NAME</u>	<u>ORGANIZATION</u>	<u>PHONE</u>	<u>FAX</u>	<u>E-MAIL</u>
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**PROPOSED ARIZONA AIR QUALITY  
STATE IMPLEMENTATION PLAN (SIP)  
FOR NEW SOURCE REVIEW**

Oral Proceeding  
Hearing Officer Script

June 30, 2014

Danielle Hazeltine: Good afternoon, thank you for coming. I now open this hearing on the supplemental information being submitted in support of revisions to the state's new source review (or NSR) state implementation plan (or SIP).

It is now June 30, 2014, and the time 2:08 p.m. The location is conference room 3100B at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007. My name is Danielle Hazeltine and I have been appointed by the Director of the Arizona Department of Environmental Quality (ADEQ) to preside at this proceeding.

The purposes of this proceeding are to provide the public an opportunity to:

- (1) hear about the substance of the proposed supplemental information for the NSR SIP revision,
- (2) ask questions regarding the revision, and
- (3) present oral argument, data and views regarding the revisions in the form of comments on the record.

Representing the Department are: Steve Burr and myself.

Public notice of the supplemental information was published in the Arizona Republic and was also provided on ADEQ's website. Paper copies of the proposed rule and SIP revisions are available at the ADEQ Phoenix office.

The procedure for making a public comment on the record is straightforward. If you wish to comment, you need to fill out a speaker slip, which is available at the sign-in table, and give it to me. Using speaker slips allows everyone an opportunity to be heard and allows us to match the name on the official record with the comments. You may also submit written comments to me today. Please note, the comment period for the proposed rule and SIP revisions ends at midnight

1 tonight. All written comments must be postmarked if sent via U.S. mail or  
2 received if sent via e-mail at ADEQ by June 30, 2014. Written comments can be  
3 mailed to Steve Burr, Air Quality Legal Support Section, Arizona Department of  
4 Environmental Quality, 1110 W. Washington Street, Phoenix, 85007 or  
5 sb5@azdeq.gov. Comments may also be faxed to (602) 771-2366.

6  
7 Comments made during the formal comment period are required by law to be  
8 considered by the Department when preparing the notice of final rulemaking and  
9 SIP. This is done through the preparation of a responsiveness summary and  
10 response to comments in the Notice of Final Rulemaking in which the Department  
11 responds in writing to written and oral comments made during the formal comment  
12 period.

13  
14 The agenda for this hearing is simple. First, we will present a brief overview of the  
15 supplemental information for the proposed revision to the SIP.

16  
17 Second, I will conduct a question and answer period. The purpose of the question  
18 and answer period is to provide information that may help you in making  
19 comments on the supplemental information.

20  
21 Thirdly, I will conduct the oral comment period. At that time, I will begin to call  
22 speakers in the order that I have received speaker slips.

23  
24 Please be aware that any comments at today's hearing that you want the  
25 Department to formally consider must be given either in writing or on the record at  
26 today's hearing during the oral comment period of this proceeding.

27  
28 At this time, Steve Burr will give a brief overview of the proposal.

29  
30 \* \* \* \* \*

31 Steve Burr: Good afternoon. My name is Steve Burr. I'm an Executive Consultant  
32 with the Legal Support Section of the Air Quality Division, and I had primary  
33 responsibility for drafting the supplemental SIP revision that is the subject of this  
34 hearing.

35  
36 The purpose of the original SIP revision, which was submitted to EPA on October  
37 29, 2012, is to bring the state's new source review (or NSR) program into  
38 compliance with the federal clean air act so that the state can obtain full approval  
39 of the program from EPA.

1 The purpose of the supplemental information document is to satisfy certain  
2 technical requirements for SIPs that were not covered in the original submission. In  
3 particular, the Clean Air Act and EPA regulations require SIP submissions to  
4 identify the state or local agencies that will be responsible for implementing NSR  
5 in each area of the state.

6  
7 Briefly, in Arizona, the three counties with air quality programs, Maricopa, Pima  
8 and Pinal, have jurisdiction over NSR for most sources within their boundaries.  
9 ADEQ has jurisdiction over NSR for sources in the remainder of the state and for  
10 certain specific types of sources in the three counties.

11  
12 The specifics on which sources are subject to which agency's jurisdiction can be  
13 found in the supplemental information document itself, which is available on our  
14 website on the SIP capsules page. I'll be happy to answer any questions about  
15 jurisdiction during the Q&A portion of the hearing.

16  
17 That concludes my presentation. I will now turn the hearing back over to Danielle.

18  
19 Ms. Hazeltine: This concludes the explanation period of this proceeding on the  
20 proposed revision to the state implementation plan and the proposed rulemaking.

21  
22 \* \* \* \* \*

23  
24 Are there any questions before we move to the oral comment period?

25  
26 Hearing none, this concludes the question and answer period of this proceeding on  
27 the proposed state implementation plan revision and proposed rulemaking.

28  
29 \* \* \* \* \*

30  
31 I now open this proceeding for oral comments.

32  
33 Seeing no speaker slips, this concludes the oral comment period of this proceeding.

34  
35 \* \* \* \* \*

36  
37 If you have not already submitted written comments, you may submit them to me  
38 at this time. Again, the comment period for this proposed revision to the SIP and  
39 proposed rulemaking ends at midnight tonight, June 30, 2014.



## APPENDIX E

- 1 Thank you for attending.
- 2
- 3 The time is now 2:14 p.m. I now close this oral proceeding.